

**TOWN OF SALEM
INLAND WETLANDS & CONSERVATION COMMISSION
REGULAR MEETING MINUTES
MONDAY, OCTOBER 4, 2021 – 7:00 P.M.
SALEM TOWN HALL – CONFERENCE ROOM 1**

1. Call to Order

Chairperson Bradley called the meeting to order at 7:04 p.m.

2. Roll Call/Seating of Alternates

Present were Chairperson Kimberly Bradley, Vice-Chairperson Diba Khan-Bureau, Commissioners Jennifer Messervy and Jim Mulholland. Absent were Secretary Roger Phillips and Edward Natoli, Jr., Alternate Commissioners Lou Allen, Jr., Hank Horn, and Larry Moore. Also present was Zoning & Wetlands Enforcement Officer (ZWEO) Matthew Allen.

3. Approval of Agenda

M/S/C: Khan-Bureau/Messervy, to add the following item to the Agenda:

8(c) Plan of Conservation & Development (POCD)

Discussion: None. Voice vote, 4-0, all in favor.

4. Approval of Minutes:

a. September 7, 2021 Regular Meeting Minutes

M/S/C: Messervy/Khan-Bureau, to approve the Regular Meeting Minutes of

September 7, 2021. Discussion: None. Voice vote, 3-0-1. Voting in Favor:

Commissioners Bradley, Khan-Bureau, and Messervy. Voting in Opposition:

None. Voting in Abstention: Commissioner Mulholland.

5. Public Comment – none

6. New Business – none

7. Public Hearing(s) – none

8. Old Business

a. Wetlands Training

Chairperson Bradley provided a brief recap of the proposed Wetlands Training Session with Darcy Winther, Connecticut Department of Energy and Environmental Protection (CT DEEP), Inland Water Resources Division, Bureau of Water Protection and Land Reuse, and Land Use Attorney Michael Zizka. The purpose of the training session is to provide information regarding the Commission's rules and responsibilities, regulations, use of the GIS (Geographic Information System), interpretation of wetlands mapping, delineation of wetlands, site walks, and the like. It is hoped that the session might also help attract new

Commission members. The Commission was awarded a \$500.00 grant through the Eightmile River Wild & Scenic Outreach and Education: Community Small Grant Program for Atty. Zizka's fee. Because CT DEEP is currently not allowing in-person training, the session will, most likely, be held as a hybrid or all-virtual meeting. Members of the Planning & Zoning Commission and Eightmile River Wild & Scenic Coordinating Committee (ERWSCC) have also expressed their interest in attending the session. Should they expect the Planning & Zoning Commission to have a quorum, the meeting will be held as a Special Joint Meeting. It was noted that the Commissions shall not ask any questions referring to a specific property(ies), due to the pending legal issues. The training session was tentatively scheduled for Monday, December 6.

b. Footbridge at 270 Hartford Road

ZWEO Allen reported that the footbridge was placed by a volunteer, with the permission of the First Selectman. He has inspected the bridge, which sits over a stream, and confirmed that it does not have any footings, piers, or fasteners. Per the Regulations (page 5), the activity does not meet their definition of a regulated activity and is a permitted activity as a nonregulated use, per Section 4.2(b), which states that,

The following operations and uses shall be permitted as nonregulated uses in wetlands and watercourses, provided they do not disturb the natural and indigenous character of the wetland or watercourse by removal or deposition of material, alteration or obstruction of water flow or pollution of a wetland or watercourse:...

b) Outdoor recreation including...field trails, nature study, hiking...

Additionally, Section 4.4 states that

...The Agency, or its designated agent if so authorized by the Agency, shall rule that the proposed operation and use or a portion of it is a permitted or a nonregulated operation and use....

He stated that, per past practices, the Agency, i.e., the Commission, has authorized the ZWEO as its designated agent.

Vice-Chairperson Khan-Bureau expressed her concerns, stating that the bridge was placed over an Eightmile River watercourse without the knowledge of the Board of Selectmen, ZWEO, and/or Commission. In addition, it was placed in an area where the bridge could be washed out, posing a safety risk.

Chairperson Bradley disagreed with the ZWEO's determination, stating that all bridges pose an obstruction and alteration of a watercourse. The bridge, having been washed out during the recent storm, is evidence of the bridge being an obstruction and why it is a permitted activity. In addition, the location of the bridge, within the Eightmile River Overlay Zone, also constitutes a violation. Furthermore, the placement of the bridge on a "flashy" watercourse is troublesome. She stated that it is not under the purview of the First

Selectman to approve the installation of the bridge and the activity should have been presented to the Commission for review and approval. Any activity related to the crossing of waterways is required to be presented to the Commission to determine whether it is considered an as-of-right, regulated, or nonregulated activity. She added that concerns regarding the bridge were also raised by the town's residents at a recent ERWSCC meeting and the National Park Service has been made aware of the activity.

Extensive discussion and debate were held regarding the definition of a regulated and nonregulated activity and who holds the authority to determine the type of activity that is being proposed.

Chairperson Bradley cited Section 1.5 of the Regulations, which states that:

The Agency shall enforce the Inland Wetlands and Watercourses Act and shall issue, issue with terms, conditions, limitations or modifications, or deny permits for all regulated activities in the Town of Salem pursuant to Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

And Section 4.4:

To carry out the purposes of this section, any person proposing a permitted operation and use or a non-regulated operation and use shall, prior to commencement of such operation and use, notify the Agency on a form provided by it and provide the Agency with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or non-regulated use of a wetland or watercourse. The Agency, or its designated agent if so authorized by the Agency, shall rule that the proposed operation and use or a portion of it is a permitted or a nonregulated operation and use or that the proposed operation and use is a regulated activity and a permit is required.

Commissioner Mulholland proposed adding a regulation affirmatively designating the ZWEO as the Agent for the Agency, providing him/her with the authority to make any future determinations. Vice-Chairperson Khan-Bureau disagreed. She felt that such activity should be presented to the Commission and allowing the activity would set precedence, allowing the First Selectman to unilaterally make decisions to place a crossing(s) over a watercourse. She added that, in her 22-year tenure as a Commissioner, she has never had an Agent or First Selectman inform the Commission of what they can or cannot do. While ZWEO Allen agreed that the bridge should have been brought to his attention, he disagreed with Vice-Chairperson Khan-Bureau, stating that it is his job to inform the Commission of their legal duties. He also reminded the Commissioners that the Eightmile River Overlay Zone is under the jurisdiction of the Planning & Zoning Commission, not the Inland Wetlands & Conservation Commission. Due to their disagreement, ZWEO Allen stated the two available options: (1) appeal his decision to Superior Court and/or (2) amend their regulations.

Chairperson Bradley stated that, in her experience, every bridge is a crossing of a wetlands resource. She agreed with Vice-Chairperson Khan-Bureau that allowing the activity would set an unfathomable precedence. She was not opposed to making connections along the town's Open Spaces, but felt that the process must be followed and compared it with the proposed Disc Golf Course in which crossings were also proposed. ZWEO Allen disagreed, stating that the Disc Golf Course introduced a new use and was comprised of numerous stream crossings. Chairperson Bradley stated that her issue lies with the fact that the bridge was placed without authorization, which is a direct violation of their Regulations. She questioned whether the bridge was reviewed and approved by the Recreation Commission for recreational/hiking use. She also felt that the bridge poses safety risks and is a liability to the town. She noted that the installation of the bridge was also extensively discussed by the Eightmile River Wild & Scenic Watershed Coordinating Committee.

Vice-Chairperson Khan-Bureau stated, for the record, that the First Selectman does not have the authority to approve the placement of a water crossing without presenting the proposed activity to the Commission. ZWEO Allen disagreed, reiterating that the activity is allowable and does not need to be presented to the Commission should it be determined as a nonregulated use by the designated Agent.

Chairperson Bradley felt that the bridge should be removed until the proposed activity is formally presented to the Commission for review and approval. She will consult with the National Park Service and CT DEEP (Connecticut Department of Energy and Environmental Protection).

M/S/C: Khan-Bureau/Messervy, to continue their discussion at the Commission's November Regular Meeting. Discussion: None. Voice vote, 4-0, all in favor.

c. Plan of Conservation and Development (POCD)

Chairperson Bradley provided a brief review of the POCD. She stated that the document was placed in Google Docs and made available to the Commissioners so that they could review and edit the document as the Conservation Commission. Both Chairperson Bradley and Vice-Chairperson Khan-Bureau have made some edits and additions to the document. Vice-Chairperson Khan-Bureau stated that the Town Planner raised a concern that the Commissioners' ability to review, comment, and edit a document could constitute a quorum. ZWEO Allen concurred with the Town Planner and recommended that the Commissioners make their recommended changes directly in the document and refrain from engaging in any conversation or dialogue within the Google Docs forum and wait until the meeting to discuss their edits.

Chairperson Bradley stated that the link was also forwarded to the members of The Salem Land Trust for their input and proposed the possibility of posting the link on the town website for transparency purposes. She also recommended the Commissioners review the

Southeastern Connecticut Council of Government's (SCCOG) 2017 Regional Plan of Conservation and Development. Following the completion of the draft, Vice-Chairperson Khan-Bureau stated that she has requested that the Town Planner and ZWEO review the document prior to being submitted to the Planning & Zoning Commission.

9. Wetlands Enforcement Officer's Report

ZWEO Allen reported that he has been unable to get in touch with Wetlands and Soil Scientist George Logan, REMA Ecological Services, LLC, regarding any updates he might have for the Shingle Mill Road and Witch Meadow Road violations. As such, he has proceeded to attempt to contact the Army Corps of Engineers regarding the Shingle Mill Road violation. Chairperson Bradley reported that the National Park Service informed her that they, too, have not received any updates from the Army Corps of Engineers regarding the Shingle Mill Road violation.

10. Correspondence – none

11. Plus Deltas/Announcements

Chairperson Bradley stated that she is pleased with the results of the Route 82 Bridge Replacement Project. She also announced that the 2021 Eightmile Riverfest event will be held on Saturday, October 16, at Devil's Hopyard State Park, Pavilion Area, from 1:00 to 4:00 p.m. The event will be a free family-oriented event with music and food.

Vice-Chairperson Khan-Bureau stated that she will be hosting a bio-assessment table, demonstrating how to conduct bio-assessments, at the event. She also announced that she will be conducting the annual rapid bio-assessments in the towns of Lyme, East Haddam, and Salem on October 16, prior to the RiverFest event, and November 6.

12. Adjournment

**M/S/C: Mulholland/Messervy, to adjourn the meeting at 8:27 p.m. Discussion: None.
Voice vote, 4-0, all in favor.**

Respectfully Submitted by:

Agnes T. Miyuki, Recording Secretary for the Town of Salem